

**STATE OF MAINE**  
**Department of Transportation**

**REQUEST FOR PROPOSALS**

**for**

**PURCHASE, IMPLEMENTATION ASSISTANCE, AND  
MAINTENANCE AGREEMENTS**

**for**

**GPS BASE STATION EQUIPMENT**

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# 1.0 INTRODUCTION

The Global Positioning System (GPS) has become a vital part of the Maine Department of Transportation, herein known as the Department. GPS is currently used to set Geodetic Control, control Airborne GPS mapping projects, locate wetlands, derive centerlines, determine fathometer positions and many other endeavors. We currently own three geodetic grade rover GPS receivers. Each time we attempt to use the “rover” system, one of the three receivers MUST be stationed over a known control point while the other two are used to establish new points. By purchasing GPS base stations (permanently installed equipment) and installing them at key locations throughout the state, we will be able to put the third “rover” receiver into production. These base stations will also allow us to do Airborne GPS photography without the need to send a “rover” to occupy a known point, by using the base station network we could potentially fly numerous missions throughout the state without utilizing a “rover” or sending our employees on road trips at the last minute. The base station network operates 24 hours a day, 7 days a week. The data from this network is supplied on the internet to anyone who wants to use it, other state agencies, municipal governments or the private sector. By using a base station network, every project saves money, thereby allowing more to be done with less people. Base stations allow the “rover” equipment to be used to their fullest potential. The potential use of the data generated by the base stations by other government agencies and private sector interests is almost unlimited.

The Department requires the GPS equipment and software contained within the proposal to be capable of obtaining geodetic grade GPS results. The system and equipment shall be capable of supplying GPS data to an internet server thus making the data web available. The Department must be able to modify the data collection rate of any receivers from a remote location.

# 2.0 PROJECT MANAGEMENT

The Agreement Administrator/Project Manager is responsible for general contractual issues and ongoing, day-to-day project management.

The State’s Agreement Administrator and Project Manager is:

**Tim LeSiege**  
**Photogrammetric & Control Engineer**  
**Photogrammetry & Control Unit**  
**Maine DOT, Bureau of Project Development**  
**16 State House Station**  
**Child Street**  
**Augusta Maine 04333-0016**  
**Telephone (207) 624-3493**  
**tim.lesiege@maine.gov**

### **3.0 PROPOSAL PREPARATION**

The entire cost of proposal preparation will be assumed by bidders. Any explanation requested by a bidder regarding the meaning or interpretation of RFP language must be submitted in writing to the Project Manager. Requests may be made via fax or e-mail to expedite them. The deadline for receipt of questions is September 7, 2005. Only those explanations, clarifications, or instructions provided by the State in writing will be binding upon the State. Any information provided to a bidder concerning the RFP will be provided to all bidders who receive the RFP.

#### **3.1 SUMMARY OF KEY EVENTS**

The State reserves the right to adjust any of these dates. If the dates are adjusted, all bidders who have received a copy of the RFP from the Project Manager will be notified in writing.

<u><b>Activity</b></u>		<u><b>Date</b></u>
1. Request for Proposal Issued		August 31, 2005
2. Deadline for Written Questions	4:00 p.m. local time	September 16, 2005
4. Response to Written Questions		September 23, 2005
5. Proposal Due Date	2:00 p.m. local time	October 31, 2005

### **4.0 GENERAL PROCEDURES AND INSTRUCTIONS**

This section contains solicitation procedures, general proposal format information and submission instructions.

#### **4.1 GENERAL INFORMATION**

This Request for Proposal (RFP) is designed to select a qualified vendor who will be responsible for providing GPS equipment (CORS/ Base Station, Geodetic Grade and/or Mapping Grade), implementation support and equipment maintenance agreements for the Department of Transportation.

The selected vendor will be responsible for providing the requested equipment to meet the requirements identified in this RFP and will be held accountable for meeting these requirements.

Proposals must conform to the mandatory requirements of the RFP. No payment will be made under the resulting contract until approved by the Department.

It is the intent of the Department to select one vendor to function as prime contractor for this project. It is expected that the selected vendor will enter into a contract for equipment, installation assistance services, testing, training and a maintenance agreement that will allow the Department to pick from one of two options for purchase, depending on the money available for this effort. Each vendor may propose each purchase option described below, but must at least submit a proposal for "Purchase Option 1". Examples of the types of purchase options the Department might initiate are:

**Purchase Option 1** - the Purchase or Lease of 16 GPS base stations and three rover systems this year and the potential purchase of 10 GPS base stations between July 1, 2007 and June 30, 2009. Proposals may include a payment plan (not lump sum).

**Purchase Option 2** – the Purchase or Lease of 26 GPS base stations and three rover systems. Proposals may include a payment plan (not lump sum).

Proposals must conform to all instructions, conditions, and requirements included in the RFP. Bidders are expected to examine all documentation, schedules, and requirements stipulated in this RFP carefully and respond to each requirement in their proposals in the format prescribed.

## **4.2 TYPE OF CONTRACT**

It is expected that a contract will be awarded as a result of this procurement. In addition to the provisions of this RFP and the winning proposal, which may be incorporated by reference in the resulting contract, any additional clauses or provisions required by federal or State law or regulation in effect at the time of execution of the resulting contract will be included (in priority order) as detailed in Section 8.1.

The Department reserves the right to make a contract award without any further discussion with the bidders regarding the proposals received. Therefore, proposals should be submitted initially on the most favorable terms available to the Department from a price and service standpoint. The Department, however, reserves the right to conduct discussions with all responsible bidders who submit proposals determined to be reasonably likely of being selected for award.

## **4.3 DISCLOSURE OF DATA**

According to State procurement law, the content of all proposals, correspondence, addenda, memoranda, working papers, or any other medium which discloses any aspect of the request for proposals process will be considered public information when the award decision is announced. This includes all proposals received in response to this RFP and includes information in those proposals that a bidder may consider proprietary in nature. Therefore, the State makes no representation that it can or will maintain the confidentiality of such information.

## **4.4 INELIGIBLE BIDDERS**

Any contractor or vendor subcontractor involved in the preparation of this Request for Proposals or in the evaluation of this proposal will not be permitted to bid or be selected to perform this contract.

## **4.5 PROPOSAL SUBMISSION**

One (1) original and three (3) sealed copies of the proposal must be clearly marked “Proposals: Maine Department of Transportation GPS Base Station Project” and delivered to the Division of Purchases, Burton Cross Building, 111 Sewall St., 9 State House Station, Augusta ME 04333-0009 no later than 2:00 p.m. local time on October 31, 2005. Please note that only proposals actually received at the Division of Purchases at or before the stated time will be considered; bidders submitting proposals by mail are responsible for allowing adequate time for delivery. Proposals received after the 2:00 p.m. deadline will be rejected, without exception.

## **4.6 RIGHTS OF STATE GOVERNMENT**

This RFP does not commit the state to award a contract. The state reserves the right to reject all proposals and, at its discretion, may withdraw or amend this RFP at any time.

## **5.0 PROPOSAL FORMAT AND GUIDELINES**

Bidders shall prepare the proposal clearly and concisely, addressing all appropriate points of this RFP. Number proposal pages consecutively by section and address all requirements in the order presented in this RFP. The proposal must consist of the following sections:

- ◆ Transmittal Letter
- ◆ Section 1 Corporate Background, Financial Information, and Qualifications
- ◆ Section 2 Understanding of State's Requirements
- ◆ Section 3 Detailed Equipment and Software List
- ◆ Section 4 Implementation and Testing Plans
- ◆ Section 5 Itemized Purchase Cost and Cost for Maintenance Agreements
- ◆ Section 6 Training & Technical Support Plan
- ◆ Section 7 Additional Information

The individual sections must be prepared according to the following instructions:

### **5.1 TRANSMITTAL LETTER**

The bidder will prepare a brief transmittal letter on business stationery. The letter must be signed in ink by an individual authorized to bind the bidder to all statements in the proposal, including services and pricing. The letter must accompany the original and each copy of the proposal.

The transmittal letter must also provide a statement for each of the following:

- ◆ an itemization of all materials and enclosures submitted in response to this RFP
- ◆ the bidder's federal tax identification number
- ◆ a statement that the person signing this proposal is the person in the bidder's organization authorized to make decisions on the prices quoted and that (s)he has not participated, and will not participate, in any action contrary to this RFP
- ◆ the bidder may include other topics in the letter deemed appropriate
- ◆ Statement that the proposal and price is good for 180 days from submission date.

### **5.2 SECTION ONE--CORPORATE BACKGROUND, FINANCIAL INFORMATION, AND QUALIFICATIONS**

This section will include information on the corporate background, financial information, and qualifications of the bidder and any subcontractor proposed. The bidder and subcontractor information must be presented separately.

Evaluation of adequate financial stability must be supplied. In the event that a vendor is either substantially or wholly owned by another corporate entity, the vendor must also include the most recent detailed financial report of the parent organization and a statement that the parent organization will unconditionally guarantee performance by the Bidder in each and every term, covenant, and condition of such contract as executed by the parties.

The bidder must describe any relationships with the State that either bidder and/or its subcontractors may have or have had with the State over the last 36 months.

The bidder must supply a list of related projects that can attest to the bidder's experience and qualifications with installation, training, testing and maintenance agreements of GPS equipment. An appropriate contact person with current address and phone number must be included for each project. The information the state has an interest in collecting includes but is not limited to:

- ◆ References - Provide reference information for a minimum of three (3) state agencies and or private surveying/engineering firms which are currently using the proposed system. Include agency name, contact name and telephone number.
- ◆ time period of project
- ◆ scope of project
- ◆ total contract amount
- ◆ actual completion dates of the project milestones

## **5.3 SECTION TWO--UNDERSTANDING OF STATE REQUIREMENTS**

The bidder will describe how the proposed equipment will satisfy the state's requirements, current and future.

## **5.4 SECTION THREE--DETAILED EQUIPMENT & SOFTWARE LIST**

- ◆ Descriptive literature and specifications for each component proposed.
- ◆ Warranty - Provide a copy of the warranty provisions for the proposed system.
- ◆ Indicate whether the warranty coverage is to be provided by the proposer or by the manufacturer (if different). Also, describe how you will notify the Department of software and hardware upgrades during and after the warranty period expires.

## **5.5 SECTION FOUR—IMPLEMENTATION PLAN**

This plan should include equipment delivery schedules, software installation, testing plan and training schedules. A work plan and a schedule that addresses all installation activities required to accomplish the scope of work must be described in detail. Installation is a MaineDOT responsibility and will be scheduled accordingly. The vendor will need to adjust the work schedule accordingly.

## **5.6 SECTION FIVE—ITEMIZED PURCHASE COST AND COST FOR MAINTENANCE AGREEMENTS**

- ◆ Maintenance - Provide a copy of any proposed maintenance agreement. Indicate whether the maintenance service is to be provided by the proposer or by the manufacturer (if different).

The bidder will submit prices for the specified equipment.

The component costs of the bid for providing services set forth in this RFP must be provided by submitting forms equivalent to those in Appendix A. Instructions for completing the forms are part of Appendix A. Bidders are advised that submission of information in support of the cost schedules is strongly preferred by the Department to the extent that such information will assist in evaluating the reasonableness and rationale supporting the costs.

The amount (entered on the Contractor Pricing Matrix) that represents the bidder's total cost for services shall be inclusive of any and all tax liability (including federal, state, local and other) that may be incurred by the vendor for any activities defined by this RFP.

## **5.7 SECTION SIX—TRAINING, TESTING & TECHNICAL SUPPORT PLAN**

- ◆ Training--Provide a complete description of on-site training provided and the cost (if any) associated with this on-site training. Also, discuss training provided with future upgrades.
- ◆ Testing--Provide a complete description of on-site testing provided and the cost (if any) associated with this on-site testing. Also, discuss testing provided with future upgrades.
- ◆ Technical Support--Provide a description of technical support provided and the cost (if any) associated with this technical support.
- ◆ Describe how vendor will aid in obtaining FCC licenses.

## **5.8 SECTION SEVEN--ADDITIONAL INFORMATION**

The bidder may provide any additional information not required by the previous proposal sections that will clarify or enhance information provided. This information should be concise and germane to the proposed project.

## **6.0 EVALUATION OF PROPOSALS**

The Department will select the successful bidder through a formal evaluation process. Consideration will be given to capabilities or advantages that are clearly described in the proposal, confirmed by oral interviews if required, and verified by information from reference sources contacted by the Department.

### **6.1 EVALUATION FACTORS AND AWARD POINTS**

Each member of the Selection Committee will score the proposals according to the following criteria with a total available point score of 100 points.

<b>Corporate Background and Financial Information</b>	<b>10 Points</b>
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- Completeness of proposal - all materials listed in the Vendor Response Section

<b>Equipment &amp; Software Experience</b>	<b>20 Points</b>
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- Overall ease of operation
- References

<b>Understanding Project Requirements</b>	<b>20 Points</b>
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- Ability to meet minimum technical specifications
- Proposed system's compatibility with the Departments existing survey equipment (Geodimeter total stations).

### **Detail Project Work Plan**

**20 Points**

### **Cost Evaluation**

**30 Points**

- Costs
- Warranty & maintenance provisions and associated costs
- Technical support and associated costs
- References

During the evaluation, the Selection Committee reserves the right to hold discussions with bidders to obtain clarification of pertinent items in their proposals. Any such discussions may only address services offered in the bidder's proposal; the offering may not be changed or altered. These discussions will be in accordance with applicable state procurement procedures. However, the state reserves the right to make an award without further support of the proposals received. Therefore, it is important that each proposal be submitted in the most favorable manner possible.

## **7.0 CONTRACT AWARD**

The state's evaluation will result in the selection of a proposal that is most advantageous to the state. After analysis, evaluation, and validation of bidder responses, the Department will notify the apparent successful bidder in writing of his/her selection. The Department may require the selected bidder to participate in contract negotiations and to submit such price, technical, or other revisions to his/her proposals as may result from negotiations. Upon conclusion of the final negotiations, the Department will prepare and award a final contract. If for any reason the Department is unable to obtain an acceptable contract with the selected bidder, the selected bidder will be disqualified. In this event, the Department may then proceed to negotiate a contract with the next best proposal or may cancel negotiations entirely, at the Department's discretion.

It is to be understood by all parties that the negotiated contract award will be made in the best possible interest of the state and that the award decision shall be final. The RFP and the proposal of the successful bidder shall be incorporated into and form the basis of a legal contract. The contract will also include the provisions set forth in the standard state contract (sample copy attached as Appendix B) as well as any additional clauses or provisions required by federal or state law or regulation in effect at the time of execution of the contract.

The parties will enter into a contract for the required services and equipment. The contract may be amended to include additional work.

The contract offered will be subject to available budgetary appropriations and shall not create any obligation on behalf of the Department more than such appropriations. In the event that the amount of funds appropriated is such that the Department must restrict or terminate funding for this contract, the contract shall be terminated thirty (30) days after written notification from the Department to the vendor.

## **8.0 TERMS AND CONDITIONS**

This section of the RFP provides the Terms and Conditions associated with this procurement. The formal contract to be entered into with the successful bidder (hereinafter the "Contractor") shall contain, at a minimum, the terms and conditions set forth in this section and in the Sample Contract in Appendix B.

The term "Contract" as used here is defined as the legal agreement between the State and the successful bidder written as a result of this RFP.

### **8.1 GENERAL**

The Contract between the Department of Transportation and the Contractor shall include: 1) the State of Maine Contract for Special Services, Page 1 Signatures; 2) the State of Maine Contract for Special Services, Rider A, Specifications of Work to be Performed; 3) the State of Maine Contract for Special Services, Rider B, Payment and Other Provisions; 4) the State of Maine Contract for Special Services, Rider C, Exceptions and Clarifications to Standard Rider B; 5) the State of Maine Contract for Special Services, Rider D, Additional Requirements; 6) the State of Maine Contract for Special Services, Rider E, Further Requirements; 7) the Request for Proposal and any amendments, and written questions and answers; and 8) the Contractor's proposal submitted in response to this RFP. It is mutually understood and agreed that in the event of any conflict among the provisions of the documents, attachments, and/or exhibits that constitute the State of Maine Contract for Special Services with the vendor, referenced above, the conflict shall be resolved by giving precedence to the documents in the order listed, with Item 1, State of Maine Contract for Special Services, Page 1, having highest precedence, and item 8, the Contractor's Proposal in response to the RFP being subordinate to all other listed documents. In the event that an issue is addressed in one document that is not addressed in the other documents, no conflict in language shall be deemed to occur. However, the State reserves the right to clarify any contractual relationship in writing with the concurrence of the contractor, and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the contractor's proposal.

No modification or change of any provision in the Contract shall be made, or be construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the State. The Contract modification will be incorporated as a written amendment to the Contract. Memoranda of understanding and correspondence shall not be construed as amendments to the Contract.

In Maine, authority to approve contracts on behalf of the State is vested in the initiating department, the State Contract Review Committee. The Contractor shall sign a contract that shall then be forwarded for approval and signature by all appropriate officials in the Maine State government. The Agreement Administrator shall be the single authority to act for the State under the Contract. Whenever the State is required by terms of the Contract to provide written notice to the Contractor, such notice must be signed by the Agreement Administrator or designee.

### 8.1.1 DEVIATIONS FROM THE RFP

The requirements appearing in this RFP shall become a part of the terms and conditions of the Contract. Any deviations from the RFP must have been specifically defined by the Contractor in its proposal, which if accepted by the State, must become part of the Contract, but such deviations must not be in conflict with the basic nature of this offer. Such exceptions **must be noted on a separate paper attached to the Transmittal Letter** (see Section 5.1). While the Department is very interested in the "best" solution that meets all its requirements, bidders should make exceptions only with due care, since any exceptions deemed unacceptable by the Department may be grounds for eliminating or reducing the score of the bidder's proposal. If the awarded bidder's proposal includes any exceptions, the award itself will in no way indicate to the awarded bidder whether the exceptions, individually or collectively, are negotiable or non-negotiable.

## 9.0 SCOPE OF WORK

Scope of Work provides an overview of the scope of work and the tasks to be performed, State and contractor responsibilities, service specifications and requirements.

### 9.1 FUNCTIONAL REQUIREMENTS

- The GPS equipment must be capable of performing geodetic control surveys (centimeter accuracy), differential GPS (sub-meter accuracy) and real time kinematic (RTK) (2-3 centimeter accuracy) surveys for topographic mapping and stake out.
- The GPS receiver must have the capability to track L1 and L2 on a minimum of 12 satellites simultaneously.
- The GPS receiver must be capable of performing Static, Kinematic, and Real Time Kinematic Surveys, when used with a hand held controller.
- The GPS system must meet the following minimum accuracy requirements. Bidders may be asked to prove compliance with this requirement at a location chosen by the Department of Transportation.
  - Static Survey Accuracy
    - Horizontal: 5 mm + 1 ppm (times baseline length)
    - Vertical: 10 mm + 2 ppm (times baseline length)
  - Kinematic Survey Accuracy
    - Horizontal: 5 cm + 2 ppm (times baseline length)
    - Vertical: 10 cm + 2 ppm (times baseline length)
- The equipment must be able to operate under the following conditions:
  - Temperature:
    - Receiver: -20° to +55° C
    - Terminal: -20° to +55° C
    - Antenna: -40° to +75° C
    - PC Memory Card: -20° to +55° C
  - Humidity: 100% for receiver
  - Weather: Receiver must withstand driving rain, sleet, snow, dust, sand, cold and heat.
- The system must be able to log data at varying time intervals including but not limited to: 1, 5 & 15 second epochs.

- The system must be capable of internal data logging or PC data logging.
- The system must be capable of transmission of real-time RTK or DGPS data.
- The system must be capable of real-time broadcast.
- The system must be capable of the automatic downloading of data and the automatic or manual conversion of data into the RINEX format.
- The system must be capable of communicating to the network hub thru dial up modem and / or cell phone technology.
- The system must be capable of archival of data in raw or RINEX format data using the standard CORS/IGS data file naming convention and data structures.
- The RINEX data must be fully compatible with ANY RINEX compatible GPS processing software.
- The basestation software must allow data to be easily accessed via the internet.
- The software must be capable of automatic compression of RINEX files.
- The RTK radios must have the capacity to transmit from the base with a capability of up to thirty five (35) watts of power.
- The system must be capable of functioning and providing X,Y, Z positions in state plane including Maine 2000 State Plane Coordinates as defined by law, and on local user defined coordinate systems as well as in an assortment of datums.
- Must be compatible with Windows XP Professional operating systems.
- The office processing software must not need a hardware security key to be operated.
- The data collector software must be able to accept a list of feature codes / string labels that will be used to aid entry of codes in the field.
- The data collector software must support the following initializations:
  - On-The-Fly (OTF)
  - Static initialization (New Point)
  - Known baseline/known point
  - Projects may be opened using local datum
- The data collector software must be capable of recoding the following Quality Control/Quality Assurance data for each RTK point recorded:
  - Number of Satellites tracked during observation
  - Observation start and stop times
  - Maximum PDOP value during observation
- The data collector software must show and record the differences between the design point and the as-staked point.
- The data collector software should allow the changing of the radio frequency from internal or external radios providing the radio has more than one channel and the radio allows channels to be changed.

### **9.1.1 GENERAL REQUIREMENTS**

These specifications are to be used to provide the Maine Department of Transportation, herein known as the Department, with Global Positioning System (GPS) equipment. The equipment requested shall be capable of obtaining geodetic grade GPS results. Twenty six of the receivers shall be of CORS geodetic grade quality (herein referred to as basestation) while three of the receivers shall be mobile geodetic grade (herein referred to as rover). The term “system” shall be defined as the combination of the necessary components needed to operate a basestation or rover. The term “equipment” shall include all antennas,

choke rings, ground planes (as needed), lightning arrester, radome, meteorological sensors, mounts, cables, PC memory cards, tripods, radios, carrying cases, laptop computers, batteries, battery chargers, and software necessary to operate a base station network of twenty six basestations and three rover stations. Please be sure to itemize costs for all equipment and additional optional accessories (which shall be identified as such) on your response. Included in the proposal shall be the terms and cost of maintenance agreements.

### **9.1.2 SUPPORT**

The contractor must provide a minimum of two (2) years technical, software, hardware and firmware support. Support shall include but not be limited to upgrades of firmware, hardware and software at no additional charge. The manufacturer shall also provide technical support via phone or internet at no additional charge, said terms of support shall be listed in the proposal.

Additional telephone support should be offered for 36 months subsequent. Telephone support should be available from 8 to 5, Eastern Time Monday through Friday, except for State holidays. The Department reserves the right to enter into long term support with the contractor should it be deemed necessary to adequately maintain the system.

### **9.1.3 TRAINING**

At a minimum the contractor will provide initial on-site training sessions for the users of the system.

Each session must handle 5 -10 Department staff people. This training will be of the “Train the Trainer” format. Completion of training will be defined as the staff person’s ability to operate the software and equipment unassisted and independent of the training staff.

After the initial training session the contractor will provide up to two additional on-site training sessions each year of the agreement. These sessions will be scheduled and held at the Department’s discretion.

Furthermore, the contractor will provide on-site technical training for the Department staff to be assigned to maintain and support the system.

## **9.2 DOCUMENTATION**

The contractor shall provide the Department with electronic versions of the user manuals for the system in MS Word XP Office 2003 or PDF format. These manuals must be of sufficient detail to allow an inexperienced user to enter and retrieve information with no assistance. The manual must be reviewed and approved by the Department.

The contractor shall provide the Department with electronic versions of the system administration manual and developer documentation for the system in MS Word XP Office 2003 or PDF format. These manuals must be of sufficient detail to allow Departmental programming staff to support the system. The manual must be reviewed and approved by the Department.

## **9.3 WIDE AREA NETWORK COMPATIBILITY**

The State of Maine Bureau of Information Services (BIS) has built and is currently expanding a backbone telecommunications network capable of meeting the present and future needs of the State. The infrastructure, unique in many areas, is a combination of State-owned and operated systems and leased facilities.

The Department requires the use of this statewide network. The vendor must propose a communication implementation that will successfully operate over the existing network environment.

Application performance shall be measured during normal working hours, which are 7:00 a.m. to 6:00 p.m. Eastern time, Monday through Friday, except for State holidays.

The vendor shall propose a method for measuring performance and shall conduct and certify the accuracy of the performance measures. The method is subject to approval by the Department.

Routine Inquiries/Retrievals for Project Information. Response time must be no longer than 30 seconds for 95% of the transactions.

## APPENDIX A: CONTRACTOR PRICING MATRIX OPTION 1

<b>Hardware Equipment</b>	<b>Cost</b>
Receivers	
Rover Style (Insert model here)	
Base Station Style (Insert model here)	
Antennas	
Rover style (Insert model here)	
Base Station Style (Insert model here)	
Cables	
Please list necessary cables w/ part #	
Tripods	
Range Poles	
Batteries	
Please list necessary battery types w/ part #)	
<b>Hardware Equipment Total</b>	<b>\$</b>
<b>Software</b>	
CORS Operations Software	
CORS Validation Software	
Rover Adjustments Software	
Please list other necessary software here	
<b>Software Total</b>	<b>\$</b>
<b>Training &amp; Support</b>	
<b>Hardware Training Classes</b>	
<b>Software Training Classes</b>	
<b>CORS Creation Support (w/ NGS)</b>	
<b>Maintenance Agreements</b>	
<b>Hardware - 12 Months</b>	
<b>- 24 Months</b>	
<b>- 36 Months</b>	
<b>- 48 Months</b>	
<b>Software - 12 Months</b>	
<b>- 24 Months</b>	
<b>- 36 Months</b>	
<b>- 48 Months</b>	
<b>Implementation Support</b>	
<b>Training &amp; Support Total</b>	
<b>Final Proposed Total</b>	

### Instructions for completing Contractor Pricing Matrix

- The proposed prices should be given as a fixed price for supplying the required hardware and software to the Department.
- The minimum and maximum Support Prices should be given as monthly, annual or bi-annual fixed rates and noted as such for support if the Department chooses to purchase the equipment instead of lease it.

The Training Cost should be given as a price per class, with up to 10 people per class.

## CONTRACTOR PRICING MATRIX OPTION 2

Hardware Equipment	Cost
Receivers	
Rover Style (Insert model here)	
Base Station Style (Insert model here)	
Antennas	
Rover style (Insert model here)	
Base Station Style (Insert model here)	
Cables	
Please list necessary cables w/ part #	
Tripods	
Range Poles	
Batteries	
Please list necessary battery types w/ part #)	
<b>Hardware Equipment Total</b>	\$
<b>Software</b>	
CORS Operations Software	
CORS Validation Software	
Rover Adjustments Software	
Please list other necessary software here	
<b>Software Total</b>	\$
<b>Training &amp; Support</b>	
<b>Hardware Training Classes</b>	
<b>Software Training Classes</b>	
<b>CORS Creation Support (w/ NGS)</b>	
<b>Maintenance Agreements</b>	
<b>Hardware - 12 Months</b>	
<b>- 24 Months</b>	
<b>- 36 Months</b>	
<b>- 48 Months</b>	
<b>Software - 12 Months</b>	
<b>- 24 Months</b>	
<b>- 36 Months</b>	
<b>- 48 Months</b>	
<b>Implementation Support</b>	
<b>Training &amp; Support Total</b>	
<b>Final Proposed Total</b>	

### Instructions for completing Contractor Pricing Matrix

- The proposed prices should be given as a fixed price for supplying the required hardware and software to the Department.
- The minimum and maximum Support Prices should be given as monthly, annual or bi-annual fixed rates and noted as such for support if the Department chooses to purchase the equipment instead of lease it.

The Training Cost should be given as a price per class, with up to 10 people per class.



# **APPENDIX B SAMPLE CONTRACT**

STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
Agreement to Purchase Services

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is by and between the State of Maine, Department of Transportation, hereinafter called "Department," and \_\_\_\_\_, located at \_\_\_\_\_, telephone number \_\_\_\_\_, hereinafter called "Provider", for the period of \_\_\_\_\_ to \_\_\_\_\_. The contract for products, maintenance, and services may be renewed on an annual basis at the end of the warranty period at the discretion of the State of Maine.

The Employer Identification Number of the Provider is \_\_\_\_\_

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B - Payment and Other Provisions
- Rider C - Exceptions
- Rider D - Additional Requirements
- Rider E – Further Requirements
- Appendix A (C) – Computer Application Accessibility Standard

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in \_\_\_\_\_ original copies.

**DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
David Cole, Commissioner

And

\_\_\_\_\_

By: \_\_\_\_\_  
Name and Title, Provider Representative

Total Agreement Amount: \$ \_\_\_\_\_

## RIDER A SPECIFICATIONS OF WORK TO BE PERFORMED

These specifications are to be used to provide the Maine Department of Transportation, herein known as the Department, with Global Positioning System (GPS) equipment. The equipment requested shall be capable of obtaining geodetic grade GPS results and/or Real Time Kinematic (RTK) grade results. Twenty six of the receivers shall be of CORS geodetic grade quality (herein referred to as basestation) while three of the receivers shall be mobile geodetic grade (herein referred to as rover). The term “system” shall be defined as the combination of the necessary components needed to operate a basestation or rover. The term “equipment” shall include all antennas, choke rings, ground planes (as needed), lightning arrester, radome, meteorological sensors, mounts, cables, PC memory cards, tripods, radios, carrying cases, laptop computers, batteries, battery chargers, and software necessary to operate a base station network of twenty six basestations and three rover stations.

The GPS equipment must be capable of performing geodetic control surveys (centimeter accuracy), differential GPS (sub-meter accuracy) and real time kinematic (RTK) (2-3 centimeter accuracy) surveys for topographic mapping and stake out. The receiver should be capable of operating in static, fast static, DGPS, kinematic and real time kinematic (RTK) mode.

### SPECIFICATIONS

- The GPS receiver must have the capability to track L1 and L2 on a minimum of 12 satellites simultaneously.
- The GPS receiver must be capable of performing Static, Kinematic, and RTK Surveys, when used with a hand held controller.
- The GPS system must meet the following minimum accuracy requirements. Bidders may be asked to prove compliance with this requirement at a location chosen by the Department of Transportation.
  - Static Survey Accuracy
    - Horizontal: 5 mm + 1 ppm (times baseline length)
    - Vertical: 10 mm + 2 ppm (times baseline length)
  - Kinematic Survey Accuracy
    - Horizontal: 5 cm + 2 ppm (times baseline length)
    - Vertical: 10 cm + 2 ppm (times baseline length)
- The equipment must be able to operate under the following conditions:
  - Temperature:
    - Receiver: -20° to +55° C
    - Terminal: -20° to +55° C
    - Antenna: -40° to +75° C
    - PC Memory Card: -20° to +55° C
  - Humidity: 100% for receiver
  - Weather: Receiver must withstand driving rain, sleet, snow, dust, sand, cold and heat.
- The system must be able to log data at varying time intervals including but not limited to: 1, 5 & 15 second epochs.
- The system must be capable of internal data logging or PC data logging.
- The system must be capable of transmission of real-time RTK or DGPS data.
- The system must be capable of real-time broadcast.
- The system must be capable of the automatic downloading of data and the automatic or manual conversion of data into the RINEX format.

- The system must be capable of communicating to the network hub thru dial up modem and / or cell phone technology.
- The system must be capable of archival of data raw or RINEX format data using the standard CORS/IGS data file naming convention and data structures.
- The RINEX data must be fully compatible with ANY GPS processing software.
- The basestation software must allow data to be easily accessed via the internet.
- The software must be capable of automatic compression of RINEX files.
- The RTK radios must be capable of operating on a minimum of ten (10) frequencies.
- The RTK radios must have the capacity to transmit from the base with a capability of up to thirty five (35) watts of power.
- The system must be capable of functioning and providing X,Y, Z positions in state plane including Maine 2000 State Plane Coordinates as defined by law, and on local user defined coordinate systems as well as in an assortment of datums.
- Must be compatible with the Department operating systems.
- The office processing software must not need a hardware security key to be operated.
- The data collector software must be able to accept a list of feature codes / string labels that will be used to aid entry of codes in the field.
- The data collector software must support the following initializations:
  - On-The-Fly (OTF)
  - Static initialization (New Point)
  - Known baseline/known point
  - Projects may be opened using local datum
- The data collector software must be capable of recoding the following Quality Control/Quality Assurance data for each RTK point recorded:
  - Number of Satellites tracked during observation
  - Observation start and stop times
  - Maximum PDOP value during observation
- The data collector software must show and record the differences between the design point and the as-staked point.
- The data collector software should allow the changing of the radio frequency from internal or external radios providing the radio has more than one channel and the radio allows channels to be changed.

## **GENERAL REQUIREMENTS**

Manufacturer must provide a minimum of two (2) years technical, software, hardware and firmware support. Support shall include but not be limited to upgrades of firmware, hardware and software at no additional charge. The manufacturer shall also provide technical support via phone or internet at no additional charge.

**RIDER B**  
**METHOD OF PAYMENT AND OTHER PROVISIONS**

1. **AGREEMENT AMOUNT** \$ \_\_\_\_\_

2. **INVOICES AND PAYMENTS** The Department will pay the provider as follows:

The Department and Provider have identified certain deliverables on which payment will be based. Payment deliverables are those that represent the completion of major phases of the project. The payment deliverables are detailed in the Updated Detailed Project Plan.

Payment deliverables are predicated upon successful completion and written approval by the Department of the described tasks and deliverables. Payments will be made to the Provider after written approval of the payment deliverable. The Department will make payments to the Provider within forty-five (45) days after approval of the invoice by the Agreement Administrator, subject to the availability of funds.

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: Timothy E. LeSiege, PE  
Title: Photogrammetric & Control Engineer  
Address: Child Street, 16 State House Station  
Augusta, Maine 04333-0016

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.
- e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
- f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.
- g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.



13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This



indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

**RIDER C**  
**EXCEPTIONS**

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## RIDER D

### ADDITIONAL PROVISIONS

The following additional provisions supplementing Rider B, Methods of Payment and Other Provisions apply to all agreements with the Department of Transportation.

1. **AUDIT** Funds provided under this Agreement are subject to the audit requirements contained in the Maine Uniform Accounting and Auditing Practices for Community agencies (MAAP), and may further be subject to audit by authorized representatives of the Federal Government.

2. **REPORTING SUSPECTED ABUSE/NEGLECT** The Provider agrees that when any staff in its employ under this Agreement has reasonable cause to suspect that a child or an adult has been or is likely to be abused or neglected, the Provider shall cause a report to be made to the Department of Transportation pursuant to 22 MRSA §§ 3477 and 4011.

3. **CONFIDENTIALITY** In conformance with Federal and State statutes and regulations, the Provider and the Department shall guarantee the protection of information of a confidential nature regarding all persons served under the terms of this Agreement, including the proper care, custody, use and preservation of records, papers, files, communications of the agency and any such other items that may reveal confidential information about persons served through this Agreement.

4. **LOBBYING** No Federal or State appropriated funds shall be expended by the Provider for influencing or attempting to influence an officer or employee of any agency, a member of Congress or State Legislature, an officer or employee of Congress or State Legislature in connection with any of the following covered actions: the awarding of any agreement; the making of any grant; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any agreement, grant, or cooperative agreement. Signing this Agreement fulfills the requirement that Providers receiving over \$100,000 in Federal or State funds file with the Department on this provision.

If any non-Federal or State funds have been or will be paid to any person in connection with any of the covered actions in this provision, the Provider shall complete and submit a “Disclosure of Lobbying Activities” form.

5. **DRUG-FREE WORKPLACE** The Provider certifies that it shall provide a drug-free workplace by: publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee’s workplace and specifying the actions that will be taken against employees for violation of such prohibition; establishing a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the grantee’s policy of maintaining a drug-free workplace, available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace, providing a copy of the drug-free workplace statement to each employee to be engaged in the performance of this Agreement; notifying the employees that as a condition of employment under the Agreement the employee will: abide by the terms of the statement; and notify the employer of any criminal drug conviction for a violation occurring in the workplace no later than five days after such conviction.

The Provider shall notify the state agency within ten days after receiving notice of criminal drug convictions

occurring in the workplace from an employee or other wise receiving actual notice of such conviction; and will take one of the following actions, within 30 days of receiving such notice with respect to any employee who is so convicted: take appropriate personnel action against such an employee, up to and including termination; or requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

6. **DEBARMENT AND SUSPENSION** In signing this Agreement, the Provider certifies to the best of its knowledge and belief that it and all persons associated with the Agreement, including persons or corporations who have critical influence on or control over the Agreement are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency.

The Provider further agrees that the Debarment and Suspension Provision shall be included, without modification, in all sub-agreements.

7. **ENVIRONMENTAL TOBACCO SMOKE** By signing this Agreement, the Provider certifies that it shall comply with the Pro-Children Act of 1994, P.L. 103-227, Part C which requires that smoking not be permitted in any portion of any indoor facility owned, leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Provider further agrees that it shall require the language of this certification be included in any sub-agreement.

8. **MEDICARE AND MEDICAID ANTI-KICKBACK** By signing this Agreement, the Provider agrees that it shall comply with the strictures of 42 U.S.C. 1320a-7b(b) which prohibits the solicitation or receipt of any direct or indirect remuneration in return for referring or arranging for the referral of an individual to a provider of goods or services which may be paid for with Medicare, Medicaid, or State health program funds.

9. **PUBLICATIONS** When issuing reports, brochures, or other documents describing programs funded in whole or in part with funds provided through this Agreement, the Provider agrees to clearly acknowledge the participation of the Department of Transportation in the program. In addition, when issuing press releases and requests for proposals the Provider shall clearly state the percentage of the total cost of the project or program to be financed with Agreement funds, and the dollar amount of Agreement funds for the project or program.

10. **MOTOR VEHICLE CHECK** The Provider shall complete a Bureau of Motor Vehicles check on all agency staff and volunteers who transport or may transport clients. This check must be completed prior to allowing the staff person or volunteer to transport clients, and at least every two years thereafter. If a staff member or volunteer's Motor Vehicles record contains any Operating Under the Influence or other violations that indicate an unsafe driving history, he/she may not transport clients. The Provider shall implement

agency/program policy to assure compliance with this requirement.

11. **OWNERSHIP** All notebooks, plans, working papers or other work produced in the performance of this Agreement are the property of the Department and upon request shall be turned over to the Department.

## **RIDER E FURTHER REQUIREMENTS**

The following additional requirements supplement Rider B, Methods of Payments and Other Provisions:

### **1. ADDITIONAL GENERAL REQUIREMENTS**

#### **1.1 Definitions**

The following terms used in this Contract shall be defined as follows, unless the context clearly indicates otherwise:

<b>Provider</b>	<u>                    </u> , and any of its subsidiaries, affiliated entities, or successors
<b>Deliverable</b>	The work products produced by the Provider for submission to the Department for its review and approval in accordance with the provisions of this Agreement
<b>Department</b>	Maine Department of Transportation
<b>MaineDOT</b>	Maine Department of Transportation
<b>Effective Date</b>	The effective date of this Contract is the date as noted on page 1 of the Agreement to Purchase Services.
<b>Event</b>	Any written or oral communication, direction, instruction, interpretation or determination by or from the Department's Agreement Administrator, Project Manager, or any duly designated and authorized representative thereof, or any omission of the Department's Agreement Administrator, Project Manager, or duly designated and authorized representative thereof
<b>Riders</b>	Written materials that are attached to this Contract and/or incorporated by reference
<b>Subcontractor</b>	Any person not in the employ of the Provider, or any organization not owned by the Provider including its officers, employees or agents, performing work which is the responsibility of the Provider under this Agreement, including any technical consultant, firm, or corporation retained by the Provider to furnish or supply services, materials, equipment or supplies in connection with this Agreement.

#### **1.2 Deviation From The RFP**

The requirements appearing in the RFP are a part of the terms and conditions of this Contract. In no event shall anything contained in the Proposal be deemed to supersede or contravene those terms and conditions.

### **1.3 Modification**

No modification or change of any provision in this Contract shall be made, or be construed to have been made, unless such modification is mutually agreed to in writing by the Provider and the Department. The contract modification will be incorporated as a written amendment to the Contract. Memoranda of understanding and correspondence shall not be construed as amendments to this Contract.

### **1.4 Updated Detailed Project Plan**

Within thirty (30) days of execution of this contract, the Department and the Provider shall prepare an Updated Detailed Project Plan which shall detail due dates and a payment schedule for each of the contract deliverables listed in Rider A. The Updated Project Plan shall be incorporated into this Contract and made a part thereof. All deliverables approved by the Department shall be considered part of this contract.

### **1.5 Project Manager**

The Agreement Administrator may designate in writing a person or persons with delegated authority to act on the Agreement Administrator's behalf (the "Project Manager"), and the Provider may rely upon such designation until given notice of its revocation; provided, however, that in no event shall any such designation be effective to allow the Project Manager, without the approval of the Agreement Administrator, to (i) authorize the payment of invoices; (ii) consent to any amendment or modification of the Contract; or (iii) terminate this contract.

### **1.6 Interpretation**

#### **1.6.1 Reliance on Policy Determinations**

The Department shall determine all program policy. The Provider may from time to time request the Department to make policy determinations or to issue operating guidelines required for proper performance of this Contract, and the Department's Project Manager shall respond in writing in a timely manner. The Provider shall be entitled to rely upon and act in accordance with such written policy determinations and operating guidelines, unless subsequently amended, modified or changed in writing by the Department, and shall incur no liability in doing so unless the Provider acts negligently, maliciously, fraudulently, or in bad faith. Nothing contained in this Contract, or in any agreement, determination, operating guideline, or other communication from the Department shall relieve the Provider of its obligation to keep itself informed of applicable State and federal laws, regulations, policies, procedures and guidelines, to be in complete compliance and conformity therewith.

#### **1.6.2 Titles Not Controlling**

Titles of paragraphs used herein are for the purpose of facilitating ease of reference only and shall not be construed to imply a contractual construction of language.

#### **1.6.3 Gender and Number**

The use of the masculine, feminine, or neuter gender, or of the singular or plural number, from time to time herein shall not be so construed as to require a particular implication therefrom, and any such gender or number may be implied as the context may require.

#### **1.6.4 No Rule of Construction**

The parties acknowledge that this Contract was initially prepared by the Department solely as a convenience and that all parties hereto, and their counsel, have read and fully negotiated all the language used in the Contract. The parties acknowledge that, because all parties and their counsel participated in



negotiating and drafting this Contract, no rule of construction shall apply to this Contract that construes ambiguous or unclear language in favor of or against any party because such party drafted this Contract.

### **1.7 Advertising Award**

The Contract shall not refer to awards in commercial advertising in such a manner as to state or imply that the Provider or its services are endorsed or preferred by the State of Maine. News releases pertaining to this project will not be made without prior written approval from the State of Maine.

### **2. TYPE OF CONTRACT**

This Contract is a contract for GPS equipment, software, training, testing and maintenance agreements, on the basis of a firm fixed price.

### **3. ADDITIONAL TERMINATION REQUIREMENTS**

The performance of work under the Contract may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Contract is terminated and the date on which such termination becomes effective. In the event of any such termination, the Provider shall be entitled to receive just and equitable compensation for all accepted deliverables and satisfactory authorized work performed as of the termination date, subject to the terms of this Section 3 of this Rider E. In no event, however, shall the Provider be paid for loss of anticipated profit.

Upon delivery to the Provider of a Notice of Termination, specifying the nature of the termination, the extent to which performance of work under this Contract is terminated, and the date upon which such termination becomes effective, the Provider shall:

- (i) stop work under this Contract on the date and to the extent specified in the Notice of Termination;
- (ii) take such action as may be necessary, or as the Department's Project Manager may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Provider and in which the Department has or may acquire an interest;
- (iii) terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (iv) subject to the provisions of Section 3.2, assign to the Department in the manner and to the extent directed by the Department's Project Manager all of the rights, title, and interest of the Provider under the orders so terminated, in which case the Department shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders, however, notwithstanding this provision, the Provider will not be obligated to assign any such rights, title or interest in the absence of payment therefor by the Department;
- (v) with the approval or ratification of the Department's Project Manager, settle all outstanding liabilities and all claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Contract;
- (vi) subject to the provisions of Section 3.2, transfer title to the Department (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Department's Project Manager all files, processing systems, data manuals, or other documentation, in any form, that relate to all the work completed or in progress prior to the Notice of Termination; and
- (vii) complete the performance of such part of the work as shall not have been terminated by the Notice of Termination.

The Provider shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.

The Department may withhold payment of any amount in excess of fair compensation for the work actually completed by the Provider prior to termination of this Contract and will be entitled to pursue all of its other available legal remedies against the Provider. Notwithstanding the above, the Provider shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Contract by the Provider.

Neither party shall be liable for any incidental or consequential damages arising or resulting from any breach of this Contract; provided, however, that the foregoing shall not be deemed to limit in any way the provisions of Section 18 of Rider B.

The imposition of liquidated damages shall not limit the Department's rights to pursue any other remedies available to it, including but not limited to the right to seek damages pursuant to this Section, provided, however, that the Department may not recover liquidated damages and actual damages for the same breach.

The Department may, by written notice of default to the Provider, provide that the Provider may cure a failure or breach of this Contract within a period of thirty (30) days (or such longer period as the Department's Agreement Administrator or Project Manager may authorize in writing), said period to commence upon receipt of the notice of default specifying such failure or breach. The Department's exercise of this provision allowing the Provider time to cure a failure or breach of this Contract does not constitute a waiver of the Department's right to terminate this Contract, without providing a cure period, for any other failure or breach of this Contract.

In any event, this Contract shall terminate at the time specified in on page 1 of the Agreement to Purchase Services.

### **3.1 Assurances Before Breach**

If documentation or any other deliverables due under this Contract are not to the satisfaction of the Project Manager, the Provider will deliver additional Provider resources to the project in order to complete the deliverable to the satisfaction of the Department and to demonstrate that other project schedules will not be affected. Upon written notice by the Department's Project Manager of the Department's concerns regarding the quality or timeliness of an upcoming deliverable, the Provider shall, within five (5) business days of receipt of said notice, submit a corrective action plan documenting the Provider's approach to completing the deliverable to the satisfaction of the Department's Project Manager without affecting other project schedules. At his or her sole discretion, the Department's Project Manager, within five (5) business days of receipt of the corrective action plan, shall either approve the plan, reject the plan, or return the plan to the Provider with specific instructions as to how the plan can be modified to merit approval and a specific time period in which the revised plan must be resubmitted. Said determination, approving, rejecting or returning the plan, shall not be subject to the dispute resolution mechanism set forth in Section 7 of this Rider E.

### **3.2 Department Options At Termination**

In the event the Department terminates this Contract pursuant to section 3, *Additional Termination Requirements*, the Department may at its option:

- (i) retain all or a portion of such hardware, equipment, software, and documentation as has been provided, obtaining clear title to the same, and procure upon such terms and in such manner as

- the Department's Project Manager may deem appropriate, hardware, equipment, software, documentation, or services as are necessary to complete the project; or
- (ii) to the extent that the termination is predicated upon material breach of the Provider, return, as is, all or a portion of hardware, equipment, software, and documentation to Provider at Provider's expense in which instance the Provider must remit all moneys previously paid by the Department within five (5) business days of receipt of such hardware, equipment, software, and documentation.

Notwithstanding the above, nothing herein shall limit the right of the Department to pursue any other legal remedies against the Provider.

#### 4. **LIQUIDATED DAMAGES**

The Provider agrees that time is of the essence in the performance of this Contract. The Department and the Provider agree that in the event of a failure to meet the milestones and project deliverable dates or any standard of performance within the time set forth in the Provider's Updated Detailed Project Plan, damage shall be sustained by the Department and that it may be impractical and extremely difficult to ascertain and determine the actual damages which the Department will sustain by reason of such failure. It is therefore agreed that the Department, at its sole option, may require the Provider to pay liquidated damages for such failures with the following provisions:

Where the failure is the sole and exclusive fault of the Department, no liquidated damages shall be imposed.

For any failure by the Provider to meet any performance standard, milestone or project deliverable date, the Department of Maine may require the Provider to pay liquidated damages in the amount of \$5,000 per business day per deliverable, milestone, or performance standard for each and every business day thereafter until such deliverable, milestone, or performance standard is completed and accepted by the Department of Maine.

Written notification of failure to meet a performance requirement shall be given by the Department's Project Manager to the Provider. The Provider shall have five (5) business days or other period designated by the Department from the date of receipt of written notification of a failure to perform the specifications to cure the failure set forth in the written notification. If the failure is not resolved within this period, liquidated damages may be imposed retroactively to the date of expected delivery.

In the event that liquidated damages have been imposed and retained by the Department, any such damages shall be refunded, provided that the entire system turnover to the Department has been accomplished and approved by the Department according to the original schedule in the Updated Detailed Project Plan included in this Contract, as modified by mutually agreed upon change orders.

#### 5. **FAILURE TO PERFORM**

In the event the Provider has failed to perform any substantial obligation under this agreement, or has otherwise committed a breach of this Contract, the Department may withhold all moneys due and payable to the Provider, without penalty, until such failure is cured or otherwise adjudicated.

6. **PROVIDER PERSONNEL**

The parties recognize that the primary value of the Provider to the Department derives directly from the Key Personnel assigned to the project. Key Personnel are deemed to be those individuals whose resumes were offered by the Provider in his Proposal. Therefore, the parties agree that Key Personnel shall be assigned to the ACES System Development & Implementation in accordance with the time frames in the most recent mutually agreed upon project schedule and work plan, and that no re-deployment or replacement of any Key Personnel may be made without prior written consent of the Department. Replacement of such personnel, if approved, shall be with personnel of equal or greater ability and qualifications.

The Department shall retain the right to reject any of the Provider's employees whose qualifications, in the Department's judgment, do not meet the standards established by the Department as necessary for the performance of the services. In considering the Provider's employees' qualifications, the Department will act reasonably and in good faith.

The Provider may not propose individuals for this project that are employees of a State agency. Federal regulations prohibit the federal government from paying twice for any employee. For example, a person who is an employee of one state could not be employed to work on a project in a second state and be paid in any way by that state (including paid leave status) as long as any part of his state compensation is reimbursed by the federal government.

During the course of this Contract, the Department reserves the right to require the Provider to reassign or otherwise remove from the project any Provider or subcontractor employees found unacceptable by the Department. In considering the Provider's and subcontractors' employees' acceptability, the Department shall act reasonably and in good faith.

7. **DISPUTES**

In the event of any dispute arising during the term of this Contract concerning performance of this Contract, either party will serve written notice of such dispute on the other party, and the dispute shall initially be decided by the Department's Project Manager who shall, within five (5) business days, reduce such decision to writing and serve a copy on the Provider. Should the Provider be dissatisfied with this decision, the Provider may, within five (5) business days of receipt of the decision, submit the dispute to the Department's Agreement Administrator for final resolution.

8. **CONFIDENTIALITY OF INFORMATION**

All materials and information provided to the Provider by the Department, or acquired by the Provider on behalf of the Department, whether verbal, written, magnetic media, cards, or any other format shall be regarded as confidential information in accordance with the provisions of State and Federal law and ethical standards, and all necessary steps shall be taken by the Provider to safeguard the confidentiality of such material or information in conformance with State and Federal law and ethical standards.

9. **PRIME CONTRACTOR RESPONSIBILITIES**

The Provider is solely responsible for fulfillment of this Contract with the Department. The Provider assumes responsibility for all services offered and products to be delivered whether or not the Provider is the manufacturer or producer of said services.

The Provider shall be wholly responsible for performance of the entire contract whether or not subcontractors are used. Any subcontract into which the Provider enters with respect to performance under this Contract shall not relieve the Provider in any way of responsibility for performance of its

duties. Further, the Department will consider the Provider to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from this Contract. The Department shall bear no liability for paying the claims of any subcontractors, whether or not those claims are valid.

The Provider shall give the Department immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made against the Provider by any subcontractor or vendor which may result in litigation related in any way to this Contract or which may affect the performance of duties under this Contract. The requirement of prior approval of any subcontract under this Contract shall not make the Department a party to any subcontract or create any right, claim or interest in the subcontractor or proposed subcontractor against the Department. The Contractor agrees to defend (subject to the approval of the Attorney General) and indemnify and hold harmless the Department against any claim, loss, damage, or liability against the Department based upon the prior approval requirements of this Section 9, *Prime Contractor Responsibilities*. No subcontract or delegation shall relieve or discharge the Provider from any obligations or liability under this Contract.

#### **9.1 Subcontracts**

Unless provided for in this Contract, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Contract must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

All subcontract agreements must contain the following requirements:

- (i) all subcontracts must contain the Assurances enumerated in Section 10 of this Rider B; and
- (ii) all subcontracting agreements must be signed and delivered to the Department's Project Manager within five (5) business days following the subcontract execution date.

#### **10. OWNERSHIP OF INFORMATION, SOFTWARE, AND DATA**

All notebooks, plans, working papers, or other work produced in the performance of this Contract are the joint property of the Department and upon request shall be turned over to the Department. The State and the Federal government shall have unlimited rights to use, disclose, duplicate, or publish for any purpose whatsoever all information and data developed, derived, documented, or furnished by the Provider under this Contract. The Provider shall furnish such information and data, upon the request of the Department, in accordance with applicable federal and state law.

In addition, if the Provider purchases any software products as a part of this agreement, the software will become the property of the Department at the completion of the project without further costs being incurred.

The Provider shall not be precluded from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided hereunder.

#### **11. WAIVER**

This contract may be modified only by written amendment executed by all parties hereto, and approved by the appropriate State officials and federal agencies. Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach.

## **12. WARRANTY**

The Provider shall be required to expressly warrant deliverables as being correct and compliant with the terms of this Contract. The Provider hereby warrants that all application software shall:

- (i) operate as described in the RFP and the Provider's Proposal;
  - (ii) operate and conform to the detailed system specifications described in the Provider's most recent General and Detailed System Design documents or the latest mutually agreed version of the Updated Detailed Project Plan;
- and
- (iii) conform to standards of this Contract and those generally observed in the industry.

This warranty encompasses correction of defective deliverables and revision of the same as necessary, including deficiencies found during testing, implementation, or post-implementation for a period of one year from final written acceptance of all deliverables by the Department. At the direction of the Department, the Provider must immediately begin work to correct any deviations from specifications and all software related and performance deficiencies of the System and must completely correct such deficiencies within five (5) days (or longer with written notification from the Department's Project Manager). This may require emergency maintenance to correct code problems on a 24-hour, seven days a week basis. The Department shall only invoke its right to require emergency maintenance in the event that the defect is material and impairs the operation of the system. If the Provider fails to repair a deficiency or defect within the warranty period, the Department may, at its option, act to repair the deficiency, and the Provider shall be required to reimburse the Department for all costs incurred, provided Provider was afforded and opportunity to correct such deficiency or defect and failed to do so.

The Provider will also be responsible for correcting and/or updating any documentation affected by any operations support performed under this warranty provision.

Notwithstanding the foregoing, the Provider shall have no obligation to make corrections, repairs, or replacements which directly result from modifications of the system by the Department or its employees or agents; provided, however, this exception shall not apply to any modifications performed pursuant to Section 30, *Cover*, of this Rider E.

Failure of the Provider to fulfill any written commitment within the scope of this Contract shall render the Provider liable for services due to the State of Maine under the terms of this Contract.

## **13. ADDITIONAL INSURANCE REQUIREMENTS**

### **13.1 Minimum Insurance**

The Provider shall obtain, pay for, and keep in force the following minimum insurance and shall furnish a certificate or certificates evidencing that such insurance is in effect:

- (i) disability, worker's compensation, and unemployment compensation in accordance with the statutory requirements of the state where the work is performed;
- (ii) general liability insurance (including automobile and broad form contractual coverage) against bodily injury or death of any person in the amount of one million dollars (\$1,000,000) for any one occurrence; and
- (iii) insurance against liability for property damages as well as first-party fire insurance, including contents coverage for all records maintained pursuant to this Contract, in the amount of one million dollars (\$1,000,000).

### **13.2 Certificates**

The Provider shall furnish to the Department a certificate(s) evidencing that required insurance is in effect, for the policy amounts, and applicable policy numbers and expiration dates, within ten (10) business days of contract signing. In the event of cancellation of any insurance coverage, the Provider shall immediately notify the Department of such cancellation. The Provider will be required to obtain suitable replacement coverage within fourteen (14) days of the cancellation. The Department, at its option, may impose a stop work order on the Provider until such replacement coverage is secured and approved by the Department. If a stop work order is imposed, the Department shall not be liable for any costs or lost profits incurred by the Provider.

### **13.3 Notice Of Change**

The Provider shall provide the Department with written notice at least ten (10) business days prior to any change in the insurance coverage obtained to comply with this section.

### **13.4 Liability Not Limited**

The provisions of this Section 13 shall not be deemed to limit the liability or responsibility of the Provider or any of its subcontractors hereunder.

### **13.5 Insurance of Assumed Contractual Risk**

The Provider may insure any portion of the risk assumed under the provisions of this Contract based upon the Provider's ability (size and financial reserves included) to survive a series of adverse experiences, including withholding of payment by the Department, or imposition of penalties by the Department. Express prior written approval of the Agreement Administrator is required for any proposed program of self-insurance.

## **14. INSPECTION AND APPROVAL**

Final inspection and approval of all work required under this Contract shall be performed by the Department's Agreement Administrator and other officials that the State of Maine may so designate.

The State of Maine or its authorized representatives shall at all reasonable times have the right to enter the premises or such other places where duties under this Contract are being performed, to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be performed in such a manner that will not unreasonably delay work.

## **15. CONFLICT OF INTEREST**

No official or employee of the State and no other public official of the State of Maine or the federal government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in this Contract.

The Provider covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Provider further covenants that in the performance of this Contract, no person having any such known interests shall be employed.

## **16. STATE PROPERTY**

The Provider shall be responsible for the proper custody and care of any State owned property furnished for Provider's use in connection with the performance of this Contract, and the Provider will reimburse the Department for its loss or damage, normal wear and tear excepted.

17. **FEDERAL INSPECTIONS**

During and after this project, the Federal funding agency or their authorized representatives shall be allowed access to inspect all Provider materials, documents, work papers, deliverables, or any such other items which pertain to this project. The Provider shall cooperate with any federal reviews and shall supply copies of any requested materials. This requirement also applies to any subcontractor(s) who may be engaged in the project. Any subcontract permitted by the Department must contain a provision which sets forth the subcontractor's agreement with the terms set forth in this paragraph.

18. **COPIES OF REPORTS**

Upon completion of the project, the Provider shall convey to the Department copies of all interim reports, cost records, data collection forms, and any other working papers that support final system approval. These items shall also be made available, upon request, to other authorized officials from the federal government.

19. **COPYRIGHT OF DATA**

The Provider may not publish or copyright any data without prior approval, unless otherwise stated herein; provided, however, that the Provider may publish source and object code without obtaining such prior approval. The State and the federal government shall have the right to publish, duplicate, use and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

"Data" shall mean all results, technical information and materials developed and/or obtained in the performance of the services hereunder, including but not limited to, all reports, surveys, plans, charts, recordings (video and/or sound), pictures, drawings, analyses, graphic representations, and printouts, notes and memoranda, and documents whether finished or unfinished, which result from or are prepared in connection with the services performed hereunder.

20. **PATENT, COPYRIGHT AND OTHER PROPRIETARY INDEMNIFICATION**

The Provider warrants that all services, equipment, software, supplies, and any other products provided hereunder do not and will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any claim by a third party against the Department, the Department shall promptly notify the Provider and the Provider shall cooperate in the defense and provide a defense to the Department of such claim at the Provider's expense and shall indemnify the Department against any loss, cost, expense, or liability arising out of such claim, including reasonable attorney's fees.

21. **ACCOUNTING REQUIREMENTS**

The Provider shall establish and maintain an accounting system in accordance with Generally Accepted Accounting Principles (GAAP). The accounting system shall maintain records pertaining to the tasks defined in this Contract and all other costs and expenditures made under this Contract.

Specific accounting records and procedures are subject to State and federal approval. Accounting procedures, policies, and records shall be completely open to state and federal audit at any time during the contract period and for five years thereafter.

22. **AUDIT REQUIREMENTS**

The Provider shall maintain books, records, documents, and other evidence pertaining to the administrative costs and expenses of this Contract to the extent and in such detail as shall properly reflect all revenues, all net costs, direct and apportioned, and other costs and expenses of whatever nature as relating to performance of contractual duties under the provisions of this Contract. The



Provider's accounting procedures and practices shall conform to Generally Accepted Accounting Principles (GAAP) and the costs properly applicable to this Contract shall be readily ascertainable therefrom.

For work to be performed on an hourly reimbursement rate or cost reimbursement basis, the allow ability of direct and indirect costs shall be governed by 41 C.F.R., Subpart 1-15.2.

## **23. RECORDS RETENTION REQUIREMENTS**

The Provider hereby agrees to the conditions of 45 C.F.R., Part 74.24 (a), (b), and (d) regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records of this Contract. In addition, the Provider shall agree to the following terms regarding retention of contract records and access for government officials.

Unless the Department specifies in writing a shorter period of time, the Provider agrees to preserve and make available all other pertinent books, documents, papers, and records of the Provider involving transactions related to this Contract for a period of five years from the date of expiration or termination of this Contract.

Records involving matters in litigation shall be kept for one year following the termination of litigation, including all appeals if the litigation has not terminated within five years.

The Provider hereby agrees that authorized federal and State representatives shall have access to and the right to examine the items listed above during the contract period and during the five year post-contract period or until resolution. During the contract period, the access to these items will be provided at the Provider's office at all reasonable times. During the five-year post-contract period, delivery of and access to the listed items will be at no cost to the Department.

The provision of this section shall be incorporated in any subcontract of \$10,000 or more.

## **24. AUDIT LIABILITIES**

The Provider shall be liable for any State or Federal audit exceptions that are the fault of the Provider or that arise out of any action, inaction, or negligence by the Provider. In the event of an audit exception for which the Provider is liable as defined in this Article, the Provider shall have thirty (30) days to remedy the exception. If the Provider fails to remedy the exception within this time period, the Provider shall immediately return to the Department all payments made under this Contract which have been disallowed in the audit exception.

## **25. TAXES**

The Department is not required to pay taxes of any nature; however, if Provider is required to pay sales, use, value-added, or other federal, state, or local taxes based on the licenses or services provided in this Contract, except taxes based on Provider's income or property tax for software, then such taxes shall be billed to and paid by the Department upon evidence of payment by Provider.

## **26. PRICE PROTECTION**

The Provider shall ensure that all prices, terms, and warranties included in this Contract are comparable to or better than the equivalent terms being offered by the Provider to any present customer meeting the same qualifications or requirements as the Department. If, during the term of this Contract, the Provider

enters into agreements which provide more favorable terms to any other comparable customer(s), the Provider shall provide the same terms to the Department.

**27. LOBBYING CERTIFICATION**

Section 1352 of Title 31 of the U.S. Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal Provider or grantee (such as the Department) certify that no Federal funds will be used to lobby or influence a federal officer or member of Congress. The certification the Department has been required to sign provides that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall verify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As a sub-recipient, the Provider understands and agrees to the Federal requirements for certification and disclosure.

**28. PRICING AND DISCOUNT**

The Provider warrants that any element of recurring or nonrecurring cost in excess of the Contract Price designated in Section 1.6 of this Rider E which must be borne by the Department has been identified by Provider in their Proposal.

Federal funding is being used for acquisition of products and/or services, under this Contract. Consequently, interest cannot be paid under any installment purchase or lease/purchase agreement entered into as a part of this Contract.

Provider agrees to convey to the Department good title to purchased items free and clear of all liens, pledges, mortgages, encumbrances or other security interest.

**29. COVER**

If, in the reasonable judgment of the Department, a default by the Provider is not so substantial as to require termination, reasonable efforts to induce the Provider to cure the default are unavailing, and the default is capable of being cured by the Department or by another contractor without unduly interfering with continued performance by the Provider, the Department may provide or procure the services reasonably necessary to cure the default, in which event the Provider shall reimburse the Department for the reasonable cost of those services.

**30. EXTENSIONS**

In the event Provider is delayed by any act or omission of the Department (including, without limitation, the Department's failure to deliver any material to be provided by the Department when and as required, or to perform any of its covenants or obligations hereunder, or the failures of any third parties hired by the Department, then for each day of extension caused by such delay, Provider shall be entitled to a one-day extension of the time for Provider's performance. A listing of specific Department deliverables, responsibilities, and due dates will be agreed upon from time to time by the Department and Provider.

**31. TRAINING**

The Vendor shall provide, in accordance with the requirements specified in the Contract, quality instruction on all technical and user aspects of the system. The Vendor shall also develop a post-training proficiency examination. This examination is to be given by the Department and at the Department's option to all employees trained by the Vendor immediately upon completion of the training. If twenty-five (25) percent or more of the employees do not pass, additional training must be provided by the

Vendor to those employee not meeting a Department approved minimum criteria at no cost to the Department until a seventy-five (75) percent overall pass rate is achieved. The Vendor's Training Coordinator must get the prior Department approval of the minimum criteria for passing, as well as, all other Vendor provided training materials, which includes the proficiency examination.

32. **REPORTING REQUIREMENTS**

At a minimum, the Provider shall submit the following written reports:

- General status reports, at least monthly
- Quality Assurance reports, quarterly

All reports shall be submitted through the Department's Project Manager, with a copy to the Agreement Administrator, and contain, at a minimum, the information specified in the RFP and the Provider Proposal

33. **ADA**

The Provider certifies that all information technology products and software used and/or developed as part of this Contract must comply with the "State of Maine's Computer Accessibility Standard" adopted by the Information Services Policy Board 1/13/98 and attached in Appendix A.

34. **CIVIL RIGHTS ACT AND REHABILITATION ACT ASSURANCES**

In addition, compliance with the Title VI of Civil Rights Act of 1964 (42 USC § 2000d *et seq.*); Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794); and the United States Administration for Children and Families Regulations found in 45 CFR, parts 80 and 84 is required of the Vendor and all subcontractors.

35. **ATTORNEY FEES AND COST LITIGATION**

In the event of any litigation, appeal, or other legal action to enforce any provision of the Contract, the Vendor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation, if the Department is the prevailing party.

# **APPENDIX C**

## COMPUTER APPLICATION PROGRAM ACCESSIBILITY STANDARD

# **COMPUTER APPLICATION PROGRAM ACCESSIBILITY STANDARD**

**Approved by Information Services Managers' Group 12/10/97**

**Adopted by the Information Services Policy Board 1/13/98**

## **INTRODUCTION**

The purpose of this standard is to ensure that the needs of state employees and citizens of the State of Maine with disabilities are met through reasonable accommodation in the IT products and services of the state. IT products and services include data, voice, and video technologies.

## **1 Software**

### **1.1 *Keyboard Access***

1.1.1 A program must provide keyboard access to all functions of the application. All actions required or available by the program must be available with keystrokes, i.e., keyboard equivalents for all mouse actions including ,but not limited to, buttons, scroll windows, text entry fields and pop-up menus.

1.1.2 A program must have a keyboard control sequence among all program controls and focal points. (e.g. using the tab key to navigate among edit fields, text boxes, buttons, and all other controls.

1.1.3 The focus must follow the keystroke, that is, using the arrow keys to navigate through a list followed by pressing the ENTER key or spacebar to select the desired item.

1.1.4 The software shall not interfere with existing accessibility features built into the operating system, such as Sticky keys, Slow Keys and Repeat Keys.

1.1.5 Timed responses are not to be used unless the timing parameter can be adjusted by an individual user.

1.1.6 There shall be selectable visual and auditory indication of key status for all toggle keys. (i.e. visual and auditory status indicators for keys such as the Number Lock, Shift/Caps Lock, and Scroll Lock keys.

### **1.2 *Icons***

1.2.1 All icons shall have clear precise text labels included on the focus or provide a user-selected option of text-only buttons.

1.2.2 The use of icons shall be consistent throughout the application

1.2.3 Pull-down menu equivalents must be provided for Icon functions (menu, tool and format bar).

1.2.4 There must be keyboard access to all pull-down menus.

1.2.5 For graphic text, system text drawing tools or other industry standard methods must be used so that screen reader software can interpret the image.

### **1.3 *Sounds***

1.3.1 A visual cue for all audio alerts must be provided.

1.3.2 The Sounds feature must be supported where built into the operating system.

1.3.3 The user must be allowed to disable or adjust sound volume.

#### 1.4. *Display*

1.4.1 Color-coding is not to be used as the only means of conveying information or indicating an action. An alternative or parallel method that can be used by individuals who do not possess the ability to identify colors must always be provided.

1.4.2 The application must support user defined color settings system wide. Highlighting should also be viewable with inverted colors.

1.4.3 No patterned backgrounds behind text or important graphics are to be used.

1.4.4 User adjustment of, or user disabling of flashing, rotating or moving displays must be permitted to the extent that it does not interfere with the purpose of the application.

#### 1.5 *Field Labeling*

1.5.1. Consistently position the descriptions or labels for data fields immediately next to the field.

#### 1.6. *Reports and Program Output*

1.6.1 All reports and program output must be available in a format that is accessible by screen readers and other access systems.

## **2 Documentation**

2.1 All documentation must be accessible through industry standard accessibility tools

2.2 Accessibility features must be written and provided as part of documentation for the product.

## **3 Definitions**

3.1 Focus: The "current point of action" as indicated by a visual indicator such as a carrot or focus rectangle.

3.2 Sticky keys: Sticky keys is a feature of Windows 95 and other operating systems that will allow keys such as the alt, control and shift to maintain their depressed state without being depressed. I.e. to execute a control (O with sticky keys the user would tap the control key then tap the o key).

3.3 Inverted colors: Inverted colors are the opposite of each other. For example, the inverse of black on white is white on black.